

BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes
September 21, 2022

The following are the minutes from the meeting of the Buffalo Fiscal Stability Authority (the “BFSA” or the “Authority”) held on Wednesday, September 21, 2022. The Board met in compliance with New York State Executive Order 11.8. The meeting was called to order at 1:09 P.M.

Board Members Present

Chair R. Nils Olsen, Jr.
Secretary Frederick G. Floss
Director Andrew A. SanFilippo
Mayor Byron W. Brown (proxy Dowell)
County Executive Mark C. Poloncarz (proxy Cornell)

Board Member(s) Excused

Interim Vice-Chair Jeanette T. Jurasek

Staff Present

Executive Director Jeanette M. Robe
Principal Analyst/Media Liaison Bryce E. Link
Senior Analyst II/Manager of Technology Nathan D. Miller
Administrative Assistant Nikita M. Fortune
Comptroller Claire A. Waldron

Additionally Present

Richard A. Grimm, III, Esq., Magavern Magavern & Grimm LLP
Sara M. Dayton, CPA, Partner, Lumsden & McCormick, LLP
Elizabeth S. Krause, CPA, Manager, Lumsden & McCormick, LLP
Nathaniel Kuzma, General Counsel, Buffalo City School District

Opening Remarks

Chair Olsen welcomed everyone to the meeting and reviewed the agenda. The Audit, Finance and Budget Committee met earlier and recommended that the full Board approve the draft BFSA 2022 audited financial statements as provided by Lumsden & McCormick, LLP, as well as the 2022 BFSA Annual Report.

Chair Olsen stated that labor agreements would be reviewed between the Buffalo City School District (“BCSD”) and the Local 409 Operating Engineers and between Local 815 and the Buffalo Urban Renewal Agency (“BURA”).

Representatives of the Buffalo Municipal Housing Authority (“BMHA”) will be present to discuss BMHA matters.

In conclusion, Chair Olsen asked the Directors to review the Code of Ethics, the anonymous board self-evaluation and the proposed 2023 Board meeting calendar and inform BFSA Executive Director Jeanette Robe of any scheduling conflicts. The final schedule will be approved at the December Board meeting in addition to the review of responses received from the self-evaluation.

Chair Olsen stated privilege of the floor regarding the meeting's agenda items will be held at the conclusion of the meeting.

Roll Call

Chair Olsen asked Secretary Floss to call the roll; a quorum being present the meeting commenced.

City of Buffalo Commissioner of Finance, Administration, Policy and Urban Affairs, Delano D. Dowell, represented Mayor Byron W. Brown, in accordance with Subdivision 1 of §3853 of the BFSA Act.

Erie County Deputy Budget Director, Mark Cornell, represented County Executive Mark C. Poloncarz, in accordance with Subdivision 1 of §3853 of the BFSA Act.

Subdivision 1 of §3853 of the BFSA Act reads: "...The Mayor and the County Executive shall serve as ex officio members. Every director, who is otherwise an elected official of the City or County, shall be entitled to designate a single representative to attend, in their place, meetings of the Authority and to vote or otherwise act in their behalf. Such designees shall be residents of the City of Buffalo. Written notice of such designation shall be furnished prior to any participation by the signal designee...."

Approval of Minutes

Chair Olsen advanced the agenda to introduce Resolution No. 22-09: "Approval of June 22, 2022, and July 19, 2022, Meeting Minutes and Resolutions," and asked for a motion to approve.

Secretary Floss made a motion to approve the resolution.

Chair Olsen seconded the motion.

The Board voted 5-0 to approve Resolution No. 22-09.

BFSA Business

BFSA Fiscal Year ("FY") 2021-22 Independent Audit and 2022 Annual Report

Chair Olsen advanced the agenda and stated that the Audit, Finance and Budget Committee approved a motion to forward the FY 2021-22 Independent Audit to the full Board with a recommendation to approve. He introduced Resolution No. 22-10, "Approve Independent Audit Report & Annual Report for Fiscal Year 2021-22." The 2022 BFSA Annual Report was additionally reviewed during the Audit, Finance and Budget Committee. The Committee recommended Board approval of the item with authority being delegated to the Chair, Interim Vice Chair, Executive Director, and Comptroller to make any necessary changes for accurate completion. He noted BFSA is required to file both items with the New York State ("NYS")

Comptroller's Office. Additionally, these items will be submitted to various state and local officials and posted to the BFSA website. Ms. Sarah Dayton was present to answer questions of the Board. Chair Olsen asked if Directors had questions for Ms. Dayton regarding the Independent Audit or Executive Director Robe regarding the BFSA 2022 Annual Report.

Hearing no questions or comments, Chair Olsen requested a motion to approve the resolution.

Secretary Floss and Chair Olsen thanked the BFSA staff and Lumsden and McCormick for their hard work on the Independent Audit and Annual Report.

Secretary Floss made a motion to approve the resolution.
Director SanFilippo seconded the motion.

The Board voted 5 to 0 to approve the motion.

Chair Olsen stated the Governance Committee met earlier and voted to recommend full Board approval of various procedures and reports and requested a motion to consider these items in one action and approve the following resolutions:

Bylaws Res 22-11	Whistleblower Policy Res No. 22-17
Code of Ethics Res No. 22-12	Lobbying Policy Res No. 22-18
Mission Statement Res No. 22-13	Procurement Guidelines No. 22-19
Investment Guidelines Res No. 22-14	Procurement Report Res No. 22-20
Property Disposal Guidelines Res No. 22-15	Prompt Payment Policy Res No. 22-21
Use of Discretionary Funds Policy Res No. 22-16	Prompt Payment Report Res No. 22-22
	Conflicts of Interest Res No. 22-23

Secretary Floss made a motion to approve the items as recommended by the Governance Committee.

Director SanFilippo seconded the motion.

The Board voted 5-0 to approve Resolution Nos. 22-11 through 22-23.

Recognition of former BCSD Chief Financial Officer, Geoffrey Pritchard, CPA

Chair Olsen advanced the agenda and introduced Resolution No. 22-24: "Honoring Geoffrey Pritchard, CPA" for his tremendous contributions as the former Chief Financial Officer for the Buffalo City School District.

The Board voted 5-0 to approve Resolution No. 22-24.

Buffalo City School District (BCSD)

Analysis of Successor Labor Agreement with International Union of Operating Engineers Local 409 (AFL-CIO)

Chair Olsen reordered the agenda and asked Senior Analyst II Nathan Miller to review the labor agreement. Senior Analyst II Miller provided the following overview:

- Operating Engineers are responsible for school building maintenance and currently employ Custodial Engineers to maintain the facilities
- The Successor Agreement contract period is July 1, 2010, through June 30, 2026 (16-year period)
- The expired agreement included many cost-containing structural changes
- The District utilizes an Indirect Custodial System wherein Operating Engineers directly employ Custodial Engineers to perform certain duties
 - Custodial Engineers are not District employees
 - The system was developed prior to 1860 and predates the establishment of the federal income tax
 - The Operating Engineers receive a lump payment based on the square footage of the building being maintained and other factors as established by the labor agreement
 - These duties are carried out in part by Custodial Engineers
 - The custodial union negotiates directly with the Operating Engineers, not the District
 - The Internal Revenue Service considers Custodial Engineers to be common law District employees

The contract changes were described as follows:

- Commencing on July 1, 2024, any Operating Engineer hired prior to July 1, 2023 who participates in the Indirect Custodial System shall hold only one Custodial Engineering Contract
 - Any Indirect Engineer holding more than one Custodial Engineering Contract as of January 1, 2024, shall notify the District in writing by April 30, 2024, the Custodial Engineer employees to be released by June 30, 2024
 - If notice is not provided by the Operating Engineer, the District shall choose the Custodial Engineer employees to be removed by June 30, 2024, if an Operating Engineer is assigned to the school building

Secretary Floss asked if there is a seniority system to ensure choices are made fairly. Sr. Analyst Miller responded the Custodial Engineers negotiate directly with the Operating Engineers. The terms of these agreements were not provided. As the District begins to establish a Direct Custodial System, the District may hire Custodial Engineers directly and/or outside management companies.

- The District and Local 409 agree to establish a CEC (Custodial Engineer Contract) Transition Committee to discuss the implementation of the new system following the Successor Agreement's ratification
- Any Operating Engineer member hired after July 1, 2023, shall not be permitted to participate in the Indirect Custodial System, unless the BCSD and Local 409 mutually agree to extend this date
- Effective January 1, 2023, the District shall have the ability to subcontract Custodial Engineer inspection work at non-CEC school buildings

Key contract provisions:

- One-Time Signing Bonus Operating Engineers
 - All active unit members will receive \$6,000
- One-Time Signing Bonus Custodial Engineers
 - All employed full-time at ratification will receive \$1,250
- Custodial Bonus
 - All Operating Engineers responsible for supervising a District breakfast program receive an annual \$3,000 stipend
 - Effective July 1, 2023, the stipend is increased to \$4,000/program
- Salary Increases:
 - July 1, 2010 through June 30, 2022 – 0%
 - On July 1, 2022 – 19% (1.5% annualized)
 - July 1, 2023 – 4%
 - July 1, 2024 – 3%
 - July 1, 2025 – 3%

Active unit members receive lump sum longevity payments effective the employee's anniversary date of employment. The Successor Agreement increases this payment and adds a new tier at 30+ service years:

Current CBA		Successor CBA	
Years of Service	Current Amount	FY 2022-23	% Increase
0 - 5 Years	\$0	\$0	0%
5 - 9 Years	260	900	246%
10 -14 Years	585	1,200	105%
15 - 19 Years	910	1,500	65%
20 - 24 Years	1,235	1,850	50%
25-29 Years	1,560	2,150	38%
30+ Years	1,560	2,400	54%

- Transitional Bonus
 - At June 30, 2024 active Operating Engineers holding a CEC at multiple schools shall receive a one-time transition bonus of \$7,500 per school above one
- Supplemental Benefit Fund (Dental/Vision)
 - The District currently provides \$500 per Operating Engineer and covered member of their staff
 - The Successor Agreement provides a \$25,000 lump sum payment to the Local 409 Supplemental Benefit Fund and increases the annual per employee payment as follows:
 - July 1, 2023 - \$625
 - July 1, 2024 - \$650
 - July 1, 2025 - \$675
- Custodial Engineer Contract increases vary by the base contract cost by 3% or 4% in the three out years.
- Healthcare Cost Savings (Active Employees)
 - Any employee hired prior to February 1, 2007 receives health insurance at no cost
 - Those hired on or after February 1, 2007, annually contribute 10% of the health insurance's cost for single and family coverage

- The Successor Agreement increases the contribution rate for those hired on or after February 1, 2007, to 15% of the health insurance's cost for single and family coverage
- Healthcare Cost Savings (Retirees)
 - The District provides health insurance for retirees that meet the contractual requirements
 - Retiree contribution amounts are determined by the date of retirement
 - The Successor Agreement does not change any retiree health insurance term for current retirees
 - Current Operating Engineers who retire more than 90 days after ratification of the Successor Agreement and who are eligible for health insurance at retirement must enroll in the District's Medicare Advantage Plan at age 65 or when eligible and must contribute 15% of the cost to maintain District-provided coverage
 - Effective 7/1/23 the Successor Agreement establishes that all Operating Engineers hired by the District are not eligible for District-provided health insurance at retirement

Nathaniel Kuzma, General Counsel of BCSD, clarified that employees hired prior to 2/1/07 now pay 10% towards their healthcare costs and stated the Union has ratified this contract. Secretary Floss stated his concern for fairness towards employees that weren't initially direct employees of the District in changing to the new system.

Sr. Analyst Miller continued his presentation stating the net cost of the contract for the CFY is \$4.6M and \$22.1M over the four-year financial plan and is 98% funded by the General Fund.

- Funding Sources

The District provided an outline of how the Successor Agreement net costs could be addressed

 1. Special Projects Fund/Food Service Fund
 - a. American Rescue Plan Act funds
 - The District intends to utilize \$890,000 in ARPA grants to fund a portion of the 2022-23 and 2023-24 contractual costs
 - b. Miscellaneous Grants
 - The District intends to utilize miscellaneous grants cumulatively totaling \$470,000 to fund a portion of the 2022-23 through 2025-26 contractual costs
 2. Reserve Contingency: Labor Contract Settlements (GF)

The Adopted Budget includes \$26.2M to fund unsettled labor agreements
The cumulative Financial Plan amount is \$131.4M

Executive Director Robe provided the following summary:

- Ratification of the proposed Successor Agreement allows the District to settle the last remaining long-outstanding labor agreement.
- The District will be current with all collective bargaining units except for the Buffalo Teachers' Federation, the single largest bargaining unit.
- Healthcare savings were negotiated and are minor at approximately \$350,000, or 1.6% of additional contract costs.

- All Operating Engineers hired by the District after July 1, 2023, will not be eligible for District health insurance at retirement. This will impact future OPEB (“Other Postemployment Benefit”) calculations and the pay-as-you-go expense beyond the four-year plan
- Senior Analyst II Miller has tracked the use of contingency for the settlement of labor contracts as they have recently been settled; \$92.0M remains after the ratification of this contract and is not expected to be sufficient to settle the outstanding teachers’ contract. In the event this occurs, the District will be expected to submit a modified financial plan as required by the BFSA
- The 2023-2026 Financial Plan was balanced using reserves of \$90.3M and is attributed to including the funding for the settlement of outstanding labor contracts. The teacher contract could push this deficit larger.
- BFSA continues to recommend the District update its financial plan to reflect costs of the recently settled labor agreements for full transparency purposes.

Hearing no additional comments or questions Chair Olsen advanced the agenda.

Buffalo Municipal Housing Authority

Discussion with BMHA Officials

Chair Olsen stated Executive Director Gillian Brown and Deputy Executive Director Modesto Candelario would address concerns and questions about the proposed Marine Drive rent increase, status of the voucher program, and the BMHA capital plan.

Executive Director Brown stated the process to obtain a rent increase at Marine Drive has begun and it is anticipated that the rent increase will be settled by the beginning of the next fiscal year, April 2023; the last rent increase was a two-year process. BMHA was awarded half of the project-based section 8 vouchers requested. Staff is currently in the process of identifying eligible tenants.

Secretary Floss asked if any additional rent increases are planned within the next five years. Executive Director Brown stated Marine Drive, Perry and Shaffer properties are in flux and facing major revitalization projects; however, no one will be asked to pay more than 30% of their income for rent and utilities.

Secretary Floss requested a unit turnover update. Executive Director Brown stated units are being turned over faster and the occupancy rate at every development including the Marine Drive Apartments is above 90%. Some units remain vacant for on-site relocation. The waitlist has decreased.

Director SanFilippo asked if BMHA is working on any projects with the New York State Homes and Community Renewal (“NYSHCR”). Executive Director Brown stated BMHA is working closely with NYSHCR on Marine Drive, in addition to the voucher application process which is managed through NYSHCR. A Request for Qualifications (“RFQ”) was issued two years ago to redevelop the three projects. There is a different developer assigned to each site and the financing structures are very complicated.

Chair Olsen congratulated Executive Director Brown on the strides BMHA is making and thanked the administration for attending,

Buffalo Urban Renewal Agency (“BURA”)

Collective Bargaining Agreement with CSEA Local 1000/Local 815

Chair Olsen advanced the agenda and asked Principal Analyst Bryce Link to begin his presentation.

The following history was provided:

- 29 budgeted positions which includes over fifteen titles
 - 21 filled positions as of September 1, 2022
 - Current average salary = \$56,660
 - Vacancy rate as of September 1, 2022 is 27.6% = 8 FTEs
- Employees are funded through BURA’s Operating Fund
 - Revenue includes Federal Entitlement Grants, Local Program Income, and other local revenue/grants
- Ratified on July 18, 2022, with a vote of 14 to 1
- Tentatively approved by BURA Board of Directors on August 4, 2022
- Previous Collective Bargaining Agreement (“CBA”) expired June 30, 2022
- Current CBA covers July 1, 2022 through June 30, 2026
 - CBA is set to expire at the end of the current financial plan
- Similar health insurance benefits are also extended to appointed exempt employees per BURA Board of Directors
 - 12 exempt positions budgeted and 8 are filled
 - Current average salary = \$74,800
- Salary increases and longevity payments are effective back to July 1, 2022

Covered Employees Wage Agreement:

- Annual 2.0% salary increase on:
 - July 1, 2022
- Annual 3.0% salary increase on:
 - July 1, 2023, July 1, 2024, and July 1, 2025
- Total increase over four years-11.5%
- One-time bonus based on time of service – fiscal year 2022-2023
- Bonus pay based on annual performance review – beginning in fiscal year 2023-2024

Exempt Employees Wage Increase:

- Annual salary increases of \$2,000 - \$5,000 in current year
 - Future increases will be based on performance evaluation and range from \$1,200 - \$3,000 annually
- No step increases provided to exempt employees
- One-time bonus based on time of service in 2022-23
 - Future bonuses based on performance evaluation

- Two titles that deviate from basic exempt employee package with a flat salary of \$115,000 each:
 1. Director of Programming
 2. Director of Administration

One-time bonus, based on time of service for the CFY only:

- At least 6 months but less than 24 months - \$1,000
- At least 24 months but less than 60 months - \$1,500
- At least 60 months but less than 120 months - \$2,000
- At least 120 months but less than 180 months - \$2,500
- At least 180 months but less than 240 months - \$3,000
- At least 240 months - \$3,500

Employee performance-based bonus plan to be implemented over the out-years of the agreement:

	<u>Years of Service</u>			
	<u>1-3 years</u>	<u>4-6 years</u>	<u>7-9 years</u>	<u>10+ years</u>
<i>Unsatisfactory Performance</i>	\$250	\$250	\$250	\$250
<i>Satisfactory Performance</i>	\$1,000	\$1,500	\$2,000	\$2,500
<i>Above Average Performance</i>	\$1,500	\$2,000	\$2,500	\$3,000
<i>Excellent Performance</i>	\$2,000	\$2,500	\$3,000	\$3,500

Director SanFilippo asked who conducts the performance evaluations. Principal Analyst Link responded BURA management would perform the evaluations. Secretary Floss asked for clarification on an “Unsatisfactory” review receiving a monetary bonus. Principal Analyst Link stated BURA officials will address questions.

Changes:

- Health Insurance
 - Employees hired after July 18, 2022, will contribute at a minimum of 30% towards retiree health insurance
 - All employees have choice of four different plans offered through Blue Cross/Blue Shield and all employees are required to contribute towards the premium
- Longevity – addition of years 30 and 35 to the longevity schedule
 - Replaced with annual performance-based bonus
 - Longevity is only awarded every five years
- Auto Allowance—quarterly stipend of \$375 for two positions

Funding:

- CFY costs have been adequately budgeted for; estimated at \$337,000
- Prospective costs were included in 2023-2026 Financial Plan
- Modified Financial Plan submitted to reflect increased funding sources and related program and administrative cost funding
- Total four-year estimated cost of contract is \$1.5M

Recommendations and Conclusions:

- Cost increases for the current fiscal year and retroactive payments will be funded with current year resources.
- Prospective costs funded through available grants
- The MOA provides a four-year contract, which expires at the end of the CFY through June 30, 2026

- Additional items for BURA to consider in future negotiations:
 - Consider utilizing an outside labor negotiation team.
 - Require Medicare B to be primary insurance in future negotiations.
 - Future MOAs should include the appropriate health insurance contributions for those hired prior to July 1, 2000, as current CBA is silent on those employees.
 - A single comprehensive document should be created reflecting all MOAs to date.

Financial Plan Modification

A financial plan modification was approved by the BURA Board of Directors on August 4, 2022 to recognize the increase in HUD entitlement dollars. The modification is balanced. The plan was modified to increase estimated revenue and projected expenditures by \$2.1M.

Chair Olsen advanced the agenda for BURA officials, General Counsel Scott Billman and Director of Finance, Tracy Cooley to discuss the salary increase structure for exempt employees and the merit-based system process. General Counsel Billman stated he is transitioning to Senior Director of Administration for BURA, and the performance review was initially suggested during negotiations for the prior CBA to incentivize performance. The performance review builds in professional development. Chair Olsen asked if there is an appeal process for an unsatisfactory review. General Counsel Billman replied, the performance review is solely at the discretion of management; there is no appeal process. Chair Olsen stated traditional mistrust between union and management can be overcome with longevity review. A discussion ensued regarding the importance of clarity between management's expectation and employee deliverables.

Chair Olsen and Secretary Floss encouraged implementing an appeals process which would provide protection for both employees and management, and should involve a specifically written management plan.

Hearing no additional questions or comments Chair Olsen asked for a motion to approve the report and as submitted.

Secretary Floss made a motion as requested.

Director SanFilippo seconded.

The Board voted 5 to 0 to approve the report and modified financial plan.

New Business

Chair Olsen opened the floor for Director SanFilippo to discuss new business.

Director SanFilippo stated he is against the renewal of the 2022-23 contract extension with Public Financial Management. Chair Olsen asked that this objection be recorded within the official record.

Privilege of the Floor/Adjournment

Chair Olsen advanced the agenda to the public comment period or privilege of the floor. No attendees were in the room to comment so he then asked for a motion to adjourn.

Secretary Floss made a motion to adjourn.

Director SanFilippo seconded the motion.

The Board adjourned by acclamation at 2:26 P.M.